



Substance Use Screening in Public Assistance

Cabinet for Health and Family Services (CHFS)
Department for Community Based Services (DCBS)
Division of Family Support
Public Assistance Reform Task Force: October 30, 2019

DCBS

- The Department for Community Based Services (DCBS) provides family support; child care; child and adult protection; and eligibility determinations for Medicaid, food benefits, and cash assistance
- One of the goals of DCBS is to improve safety and permanency for children and ***vulnerable adults***
- Part of the DCBS mission is ***to advance person and family self-sufficiency, recovery, and resiliency***

SNAP & KTAP

- Supplemental Nutrition Assistance Program (SNAP) helps people with little or no money to buy food items at participating stores
- Kentucky Transitional Assistance Program (KTAP) provides financial assistance to needy dependent children in Kentucky and the parents or relatives with whom the children reside



Federal Regulations

- **United States Code - 21 U.S.C. 802(6):**
Definition of a controlled substance:
 - The term “controlled substance” means a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of this subchapter
 - The term does not include distilled spirits, wine, malt beverages, or tobacco

Federal Regulations

- **The Personal Responsibility & Work Opportunity Reconciliation Act of 1996**
- 42 U.S.C. 862a. - SEC. 115. Denial of assistance and benefits for certain drug-related convictions:
 - **An individual convicted of a drug felony shall not be eligible for TANF or food benefits**
 - **States may elect to exempt individuals**

Kentucky Revised Statute

- **KRS 205.2005 Food stamp eligibility for certain public assistance recipients convicted of drug offenses:**
 - Any public assistance recipient under Title IV of the Federal Social Security Act and any federal food stamp program recipient who has been convicted of a drug felony after August 22, 1996, **may remain eligible for the program benefits if the recipient has been assessed as chemically dependent and is participating in or has successfully completed a chemical dependency treatment program or is pregnant, and the recipient is otherwise eligible**

Administrative Regulation

- **921 KAR 2:006. Technical Requirements of the Kentucky Transitional Assistance Program (K-TAP)**
- Section 24. Denial of Assistance for a Drug Felon:
 - An individual convicted with a drug felony shall not be eligible for K-TAP benefits, ***except pursuant to KRS 205.2005***

Kentucky Statistics

- September 2019:
 - **227,557** total individuals received SNAP and/or KTAP in Kentucky
 - **8,357 (3.7%) individuals with a drug felony** received SNAP or TANF benefits for themselves

Screening Public Assistance Recipients

Considerations

- Children can be impacted because the resources available to the entire family are reduced
- Parents may be unwilling to apply for benefits for their children or to seek treatment for substance use issues, due to fear of losing benefits or custody of their children

Screening Public Assistance Recipients

Considerations

- Identifying need is not the same as treating need
- Screening public assistance recipients creates a negative stigma around the concept of being poor
- Major expense for minimal results

Other States' Screening of Public Assistance Recipients

State	Cost	Total TANF applicants	Drug tested	Positive test
Arkansas	\$32,506.65	19,228	5	2
Arizona	\$45.60	81,286	2	0
Kansas	\$43,879.70	22,523	220	46
Maine	\$844	3,414	7	7
Missouri	\$336,297	32,774	108	11
Mississippi	\$8,493	11,407	464	6
North Carolina	\$14,410	28,828	258	31
Oklahoma	\$50,294.48	13,361	3915	77
Tennessee	\$5,279.25	13,058	164	26
Utah	\$30,775.50	3,068	450	94
West Virginia(3 month test pilot)	\$50,172	798	83	4
Wisconsin	\$725-\$2900	2012	29	3

Constitutionality

- In 1999, Michigan became the first state to implement suspicionless drug testing for welfare recipients
- In 2003, the U.S. Sixth Circuit Court of Appeals upheld a federal district court ruling that found Michigan's law unconstitutional



Constitutionality

- In 2011, Florida passed a law requiring suspicionless drug testing of all TANF applicants and random drug testing of current beneficiaries
- In 2014, the U.S. Eleventh Circuit Court of Appeals held that Florida's law violated the Fourth Amendment for its unreasonable search of applicants



Other States' Screening of Public Assistance Recipients

- Before the court imposed an injunction in 2011, Florida implemented its rule for four months
- During that period, Florida found 2.6% of more than 4,000 applicants tested positive for controlled substance use

Other States' Screening of Public Assistance Recipients

- Florida's 2011 law required reimbursement of the drug testing fees to those who passed the drug test, costing the state \$118,140. The state spent an additional \$307,883 in legal fees and other costs appealing the ruling
- Combined with the settlement amount awarded to the plaintiff, the drug testing law cost Florida nearly \$1 million

Other States' Screening of Public Assistance Recipients

- In December 2017, former Wisconsin Governor Scott Walker created an administrative rule requiring drug screenings only for participants in the state's SNAP Employment & Training Program



Other States' Screening of Public Assistance Recipients

- Wisconsin determined that individuals enrolled in the SNAP Employment & Training program may be required to undergo a drug test:
 - ***An individual whose answers on the screening questionnaire indicate possible use of a controlled substance without a prescription order*** shall be required to undergo a test for the use of a controlled substance

What programs in Kentucky Address Substance Abuse and Treatment?

- The National Governor's Association Pilot Program
- Sobriety Treatment and Recovery Team (START)
- Kentucky Strengthening Ties and Empowering Parents (KSTEP)
- Kentucky Opioid Response Effort (KORE)
 - Targeted Assessment Program (TAP) uses KORE grant money through DBHDID

Resources

- **Department for Community Based Services (DCBS) homepage**
<https://chfs.ky.gov/agencies/dcbs/Pages/default.aspx>
- **21 U.S.C. 802(6)- Definition of a controlled substance**
<https://www.govinfo.gov/content/pkg/USCODE-2011-title21/html/USCODE-2011-title21.htm>
- **Code of Federal Regulations: 45 CFR 260-265**
<https://www.govinfo.gov/content/pkg/CFR-2007-title45-vol2/html/CFR-2007-title45-vol2.htm>
- **The Personal Responsibility and Work Opportunity Reconciliation Act of 1996** <https://www.congress.gov/104/plaws/publ193/PLAW-104publ193.pdf>
- **42 USC 862a. - SEC. 115. Denial of assistance and benefits for certain drug related convictions**
<https://www.congress.gov/104/plaws/publ193/PLAW-104publ193.pdf>
- **Vol. III, MS 2215, “Technically Excluded Individuals” – K-TAP policy**
<https://chfs.ky.gov/agencies/dcbs/dfs/Documents/OMVOLIII.pdf>

Resources

- **Kentucky Administrative Regulation - 921 KAR 2:006**
<https://apps.legislature.ky.gov/Law/KAR/921/002/006.pdf>
- **Kentucky Revised Statute - KRS 205.2005**
<https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=7652>
- **KORE (Kentucky Opioid Response Effort)**
<https://chfs.ky.gov/agencies/dbhhdid/Pages/kore.aspx>
- **CLASP Policy Brief**
https://www.clasp.org/sites/default/files/publications/2019/02/2019_d rug%20testing%20and%20public%20 0.pdf
- Justin Germain, *Opioid Use Disorder, Treatment, and Barriers to Employment Among TANF Recipients*, Office of Family Assistance, February 2018 https://mefassociates.com/wordpress/wp-content/uploads/2018/06/TANF_Opioid_Literature_Review.pdf

Questions?